STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Court of Appeals
Docket No. 243182

MAYOR OF THE CITY OF LANSING,
CITY OF LANSING, and INGHAM
COUNTY COMMISSIONER LISA DEDDEN,

Appellees/Cross-Appellants,

v

MICHIGAN PUBIC SERVICE COMMISSION
and WOLVERINE PIPE LINE COMPANY

Appellants/Cross-Appellees.

Supreme Court
Case No. 124136

Court of Appeals
Case No. 243182

MPSC Case No. U-13225

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WOLVERINE PIPE LINE COMPANY'S BRIEF ON APPEAL
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STATEMENT OF JURISDICTION

Appellant Wolverine Pipe Line Company ("Wolverine") appeals the decision of the Court of Appeals dated June 5, 2003, pursuant to an Order of this Court dated September 26, 2003, granting Wolverine's Application for Leave to Appeal. This Court has jurisdiction over this matter pursuant to MCR 7.301(A)(2).

STATEMENT OF QUESTION INVOLVED

I. **WHETHER THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT HELD THAT MCL 247.183 REQUIRES WOLVERINE TO OBTAIN THE CONSENT OF AFFECTED LOCAL GOVERNMENTS FOR THE CONSTRUCTION OF A LIQUID PETROLEUM PRODUCTS PIPELINE LONGITUDINALLY IN AN INTERSTATE HIGHWAY RIGHT-OF-WAY WHERE THE COURT OF APPEALS DECISION IS AT ODDS WITH THE STATUTE'S PLAIN LANGUAGE AND LEGISLATIVE HISTORY, AND IS CONTRARY TO THIS COURT'S RECOGNITION THAT LOCAL CONCERNS CANNOT OVERRIDE THE STATE'S AUTHORITY TO CONTROL ITS HIGHWAYS?**

The Court of Appeals would say "No."

Appellant/Cross-Appellee Wolverine Pipe Line Company says "Yes."

Appellant/Cross-Appellee the Michigan Public Service Commission says "Yes."

Appellee/Cross-Appellant Mayor of the City of Lansing, City of Lansing and Ingham County Commissioner Lisa Dedden say "No."

CONCISE STATEMENT OF MATERIAL FACTS AND PROCEEDINGS

A. Description Of Wolverine And Its Project

Wolverine is an interstate common carrier engaged in the business of constructing, operating and maintaining pipelines, including those utilized for the transportation of petroleum products*Id.*)

B. The Michigan Public Service Commission Proceedings

The Michigan Public Service Commission ("MPSC") is granted authority to control the construction and routing of petroleum products pipelines by 1929 PA 16, MCL 483.1 *et seq.* ("Act 16")

On July 23, 2002, the MPSC issued its order authorizing Wolverine to construct and operate its proposed pipeline. (App, pp 1a-38a). The MPSC found that the pipeline was needed, was reasonably designed and routed, and that no law or administrative rule required Wolverine to submit any proof of local consent with its application. The MPSC did not address whether local consent was, at some point, required. (App, p 37a).

C. The Court of Appeals Decision

The City appealed the MPSC's order to the Court of Appeals[1] arguing that: 1) the MPSC erroneously determined that it was not necessary for Wolverine to submit proof of the City's consent with its Act 16 application; 2) the MPSC improperly barred evidence of settlement negotiations between Wolverine and the MPSC; 3) the MPSC's order violated the equal protection clauses of the United States and the Michigan constitutions and MCL 483.5 by discriminating against minorities; and 4) the MPSC's order violated the public interest and was

[1] The City also requested that the Court of Appeals grant a stay pending appeal. The Court of Appeals denied the motion for stay (App, p 52a) and a subsequent motion for reconsideration. (App, p 53a). This Court subsequently denied the City's request for leave to appeal the denial of the stay . (App, p 54a).

not supported by substantial, material and competent evidence. (App, pp 39a-49a). In its June 5, 2003 Opinion, the Court of Appeals affirmed the MPSC's order. (App, pp 48-49a). The Court below also found, however, that MCL 247.183 requires Wolverine to obtain the City's consent to construct its pipeline in the I-96 highway right-of-way. (App, p 46a).

Because the Court of Appeals' interpretation of MCL 247.183 is inconsistent with the statute's plain language and legislative history and contravenes Michigan case law recognizing that local concerns cannot override the state's authority to control its highways, Wolverine filed an application for leave to appeal. The City subsequently filed a cross-application for leave to appeal. This Court granted Wolverine and the City leave to appeal the Court of Appeals decision in an order dated September 26, 2003. In its order, this Court directed the parties specifically to address the following issues:

(1) whether Wolverine is a "public utility" as that term is used in MCL 247.183; and

(2) the manner and extent to which paragraphs (1) and (2) of MCL 247.183 apply to this case. (App, p 55a).

ARGUMENT

Wolverine plans to construct and operate a twenty-six mile liquid petroleum products pipeline, mostly within the I-96 right-of-way. The continued, adequate, and safe supply of gasoline and other liquid petroleum products to mid-Michigan depends on the pipeline's construction.

Wolverine seeks a determination from this Court that subsection 13 of the state highway code, MCL 247.183, does not require a local unit of government's consent before a pipeline company constructs a liquid petroleum products pipeline longitudinally within an interstate highway right-of-way where such right-of-way is owned and controlled by the State of Michigan. As conveyed by the statute's plain language and legislative history, the Legislature intended to enable federally-defined "utilities" such as Wolverine to install facilities longitudinally in limited access highway rights-of-way in accordance with federal regulations without forcing such utilities to obtain the consent of numerous local governments. The legislative intent was to facilitate, rather than impede, the placement of certain utilities within highway rights-of-way. This interpretation is also consistent with Michigan precedent recognizing that the state's authority over a state highway (in furtherance of statewide interests) will override a city's mere local concern.

Because the Court of Appeals decision involves a statute's interpretation, it is reviewed de novo. *Cruz v State Farm Mut Auto Ins Co*, 466 Mich 588, 594; 648 NW2d 591 (2002).

I. THE PLAIN LANGUAGE AND STRUCTURE OF MCL 247.183 ESTABLISHES THAT THE LEGISLATURE DID NOT INTEND TO REQUIRE FEDERALLY-DEFINED UTILITIES SUCH AS WOLVERINE TO OBTAIN LOCAL CONSENT TO INSTALL ITS LIQUID PETROLEUM PRODUCTS PIPELINE IN A STATE HIGHWAY RIGHT-OF-WAY .

The primary goal of statutory interpretation is to effectuate the Legislature's intent. *In re MCI Telecommunications Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999). To ascertain legislative intent, this Court begins with the statute's language. *Wickens v Oakwood Healthcare System*, 465 Mich 53, 60; 631 NW2d 686 (2001). If a statute's language is clear and unambiguous, this Court will assume that the Legislature intended its plain meaning and enforce the statute as written. *Id.* If a statute is ambiguous on its face so that reasonable minds could differ with respect to its meaning, judicial construction is appropriate to determine its meaning. *Sam v Balardo*, 411 Mich 405, 418; 308 NW2d 142 (1981).

MCL 247.183 states in pertinent part as follows:

> (1) Telegraph, telephone, power, and other public utility companies, cable television companies, and municipalities may enter upon, construct, and maintain telegraph, telephone, or power lines, pipe lines, wires, cables, poles, conduits, sewers or similar structures upon, over, across, or under any public road, bridge, street, or public place, including, subject to subsection (2), longitudinally within limited access highway rights-of-way, and across or under any of the waters in this state, with all necessary erections and fixtures for that purpose. A telegraph, telephone, power, and other public utility company, cable television company, and municipality, before any of this work is commenced, shall first obtain the consent of the governing body of the city, village, or township through or along which these lines and poles are to be constructed and maintained.
>
> (2) A utility as defined in 23 CFR 645.105 (m) may enter upon, construct and maintain utility lines and structures longitudinally within limited access highway rights-of-way in accordance with standards approved by the state transportation commission that conform to governing federal laws and regulations . . . . The standards may provide for the imposition of a reasonable charge for longitudinal use of limited access highway

> rights-of-way . . . . The charge shall be calculated to reflect a 1-time installation permit fee of $5,000 per permit . . .

MCL 247.183 (1)-(2).[2]

The Court of Appeals' interpretation of this statute is that Wolverine must obtain consent from affected local governments because the words "subject to subsection (2)" in the first sentence of subsection (1) subjects Wolverine to both subsections (1) and (2). The Court of Appeals concluded:

> a project which is 'longitudinally within limited access highway rights-of-way' is one of the defined projects listed in the first sentence of the statute. The sentence also provides that such a project is also subject to subsection (2), which defines the type of facilities that may enter into such a project. In this case, it is undisputed that Wolverine is a utility defined by § 105(m). Thus, Wolverine and its project are subject to the first sentence of the first subsection and thus, may enter upon, construct and maintain the pipeline project at issue.

(App, p 45a-46a). The Court of Appeals also found that the second sentence of subsection (1), *i.e.*, the only sentence in MCL 247.183 that provides any local consent requirement, "is unclear" in regard to whether it applies to Wolverine in this case. In discussing that sentence, the Court of Appeals stated:

> [t]o conclude that the Legislature did not intend to subject a [utility as defined by 23 CFR 645.105] to the first subsection in its entirety would render [the first sentence in subsections (1) and (2)] redundant. Therefore we conclude that the Legislature intended to subject a project involving the rights-of-way of limited access highways to the first subsection in its entirety.

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[2] The word "longitudinal" is not defined in MCL 247.183 but is defined in the dictionary as "extending in the direction of the length of a thing; lengthwise." *Random House Webster's College Dictionary* (2001). Undefined statutory terms must be given their plain and ordinary meanings. *Donajkowski v Alpena Power Co*, 460 Mich 243, 248; 596 NW2d 574-249 (1999). When confronted with undefined terms, it is proper to consult dictionary definitions. *Id.*

(App, p 46a). As discussed below, however, the Court of Appeals' analysis contradicts the plain language and structure of MCL 247.183.

A. MCL 247.183(1) And (2) Apply To Different Groups Of Entities

Subsections (1) and (2) of 247.183 apply to different groups of entities. Subsection (1) applies to "[t]elegraph, telephone, power, and other public utility companies." MCL 247.183(1). In comparison, subsection (2) applies to any "utility as defined in 23 CFR 645.105(m)." MCL 247.183(2).

1. MCL 247.183(1) Entities

MCL 247.183(1) does not define the term "public utility" or "public utility companies." As has been stated by this Court, "[t]he problem of how to define 'public utility' has puzzled the Legislature and the courts for at least a century. . . . This is understandable if we consider the term as it is applied to specific objectives of the various laws." *White v City of Ann Arbor*, 406 Mich 554, 564, n2; 821 NW2d 283, 285, n2 (1979)[emphasis added].

In *Bruce Township v Gout,* 207 Mich App 554; 526 NW2d 40 (1995), the Michigan Court of Appeals held that a natural gas company is a public utility company under MCL 247.183(1). In reaching that determination, the Court of Appeals relied on a common law definition of "public utility" to determine the scope of MCL 247.183(1), stating:

> [t]he term "public utility" means every corporation, company, individual, or association that may own, control, or manage, except for private use, any equipment, plant or generating machinery in the operation of a public business or utility; utility means the state or quality of being useful.

Id. at 558 (*citing Schurtz v Grand Rapids*, 208 Mich 510, 524; 175 NW 421 (1919) (finding a waterworks plant that supplied water to the inhabitants of Grand Rapids to be a "public utility" under the predecessor provision of the current Michigan Constitution Article VII, § 25)(emphasis added).

The common law definition of "public utility" used in *Bruce Township* excludes facilities operated "for private use." *Id.* at 42-43. In *Bruce Township*, the Court of Appeals found that the natural gas company was not operating facilities for a private use because all of the gas it produced "was sold to a public utility . . . for distribution to the public; and it did not use any of the natural gas for its own purposes, or sell it to anyone else." *Id.* at 43.

The distinction between the operation of a utility for private and public use was also explored in *National Steel Corp v Public Service Comm'n*, 204 Mich App 630; 516 NW2d 139 (1994) and *Dome Pipeline Corp v Public Service Comm'n*, 176 Mich App 227; 439 NW2d 700 (1989) In *National Steel*, the Court found that a pipeline owned by a steel factory used to transport the factory's gas for its own internal purposes was dedicated only to a private use and was not a "public utility." *National Steel*, 204 Mich App at 630. In contrast, in *Dome Pipeline Corp*, a pipeline that purchased gas from several producers, held title to the gas it transported, and then sold the gas to a single industrial customer was found to be a public utility because it was dedicated to a public use. *Dome*, 176 Mich App at 234. Wolverine's pipeline is intended in part to meet consumer demand for petroleum products in the east-central, central, and northern Michigan areas for the foreseeable future and avoid any decrease in available supply. (App, pp 1a-38a). As such, Wolverine's pipeline is more properly characterized as having a public use.

The Court of Appeals in *Dome Pipeline Corp* also noted that "the state cannot confer the power of eminent domain to seize private property for *private use.*" *Id.* at 705 (*citing Poletown Neighborhood Council v Detroit*, 410 Mich 616; 304 NW2d 455 (1981); *City of Center Line v Chmelko*, 164 Mich App 251; 416 NW2d 401 (1987))[emphasis added]. Act 16, the statute under which Wolverine sought and obtained MPSC authority to build its pipeline, grants Wolverine condemnation authority to acquire necessary rights-of-way. Accordingly, in this

manner, Wolverine's pipeline operations appear to be dedicated to a public rather than private purpose.

Although this Court has previously recognized in *White* that the "public utility" definition is defined, interpreted and applied differently depending on the specific objectives of the various laws, it may be useful to examine how the term "public utility" has been defined in other contexts. *White,* 406 Mich 554 at 564, n 2. In *Charter Township of Meridian v Roberts*, 114 Mich App 803; 319 NW2d 678 (1982), for example, the Court of Appeals relied on an Attorney General opinion in concluding that a cable television system was a "public utility" under Article VII, § 29 of the Michigan Constitution. The Attorney General's opinion stated:

> A further indication of what systems are public utilities for purposes of Michigan constitutional law may be taken from the list of systems included under the jurisdiction of the Public Service Commission in the act establishing it. 1939 PA 3; MCLA 460.1 *et seq.*; MSA 22.13(1) *et seq.* This act, of course, long antedates the 1963 Constitution, and its provisions may be presumed to have had some effect on constitutional drafting. . . . A recent case has made clear that it is this listing which establishes the status of a particular industry as a public utility. *Northern Michigan Water Co v Michigan Public Service Commission*, 381 Mich 340; 161 NW2d 584 (1968).

OAG 1973-1974 No. 4080, p 130, 133 (April 25, 1974). The Attorney General opined that cable television systems were public utilities under the list provided in Section 6 of 1939 PA 3 (MCL 460.6), which includes "communications agencies." Under Section 6 of 1939 PA 3, the MPSC has jurisdiction to regulate "all public utilities" and may

> hear and pass upon all matters pertaining to, necessary, or incident to the regulation of public utilities, including . . . oil . . . and pipeline companies . . . .

MCL 460.6. As a "pipeline" (or "oil") company, Wolverine appears to be included within the scope of "public utilities" covered by 1939 PA 3.

Likewise, MCL 460.701, which relates to the protection of underground facilities, defines "public utility" as:

> an electric, steam, gas, telephone, power, water *or pipeline company* subject to the jurisdiction of the public service commission pursuant to Act No. 3 of the Public Acts of 1939, as amended, being sections 460.1 to 460.8 of the Michigan Compiled Laws . . . [and] *Act No. 16 of the Public Acts of 1929, being sections 483.1 to 483.11 of the Michigan Compiled Laws* . . . .

MCL 460.701(d) [emphasis added]. As a pipeline company subject to the MPSC's jurisdiction under Act 16, which specifically relates to petroleum pipelines, Wolverine also is included within the statutory definition of "public utility" used in MCL 460.701.

Notably, Article VII, § 25 of the Michigan Constitution, which forbids municipalities from acquiring a "public utility" unless certain voting requirements are satisfied, has been narrowly interpreted. The language of that provision, however, explicitly limits its application to acquisition of a "public utility furnishing light, heat or power . . . ." Mich Const of 1963, art VII, § 25. This Court found this limitation important in holding that a cable television system was not a public utility under Article VII, § 25 of the Michigan Constitution. *White*, 406 Mich at 570. In a companion case to that decision, however, this Court also held that the same cable television system was a public utility under the Subdivision Control Act, which defines "public utility" as "all persons . . . providing gas, electricity, sewer, or other services of a similar nature." *White*, 406 Mich at 572. The Court found that the cable television system was a service "of a similar nature" to the other services listed in the statute. *Id.*

Because various statutory definitions of "public utility" include "oil" or "pipeline" companies within their scope, Wolverine could be considered a "public utility" under MCL 247.183(1). As discussed *infra*, however, Wolverine is not subject to MCL 247.183(1)'s consent requirements because it is exclusively governed by MCL 247.183(2).

2. MCL 247.183(2) Entities

Section 247.183(2) states in pertinent part:

> A *utility as defined in 23 CFR 645.105(m)* may enter upon, construct and maintain utility lines and structures longitudinally within limited access highway rights-of-way in accordance with standards approved by the state transportation commission that conform to governing federal laws and regulations.

MCL 247.183(2)[emphasis added]. While the term "public utility companies" in subsection (1) is undefined by the statute, 23 CFR 645.105(m) defines a "utility" as follows[3]:

> Utility – a privately, publicly, or cooperatively owned *line, facility or system* for producing, transmitting, or *distributing* communications, cable television, power, electricity, light, heat, gas, *oil, crude products*, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system, which directly or indirectly serves the public. The term utility shall also mean the utility *company* inclusive of any wholly owned or controlled subsidiary. [emphasis added].

Based on this definition, Wolverine is within the parameters of Section 645.105(m), and thus MCL 247.183(2), because it transmits and distributes oil and crude products. (App, pp 45a-46a). This conclusion is significant because, as discussed below, subsection (2) does not require a "utility" to obtain local pre-approval for longitudinal utility activities within limited-access highway rights-of-way.

B. Because Wolverine Is A Federally-Defined Utility Under MCL 247.183(2) It Does Not Need Local Consent To Locate Its Petroleum Products Pipeline In The I-96 Right-Of-Way.

MCL 247.183(2) unambiguously permits Wolverine to install its pipeline in the I-96 rights-of-way without the City's consent. Subsection (2) plainly states that "[a] utility as defined in 23 CFR 645.105 may enter upon, construct and maintain utility lines and structures

[3] Beginning in 2001, the Code of Federal Regulations no longer codified each individual definition listed in 23 CFR 645.105 by a sub-letter, such as the "(m)" after 645.105(m). The definition of "utility" remains unchanged, however, as part of 23 CFR 645.105.

longitudinally within limited access highway rights-of-way." MCL 247.183(2). As discussed above, it is undisputed that Wolverine is a "utility" under 23 CFR 645.105. (App, pp 45a-46a). It also is undisputed that Wolverine seeks to install its pipeline in the I-96 right-of-way, which is a limited access highway right-of-way. MCL 247.183 (2), accordingly, unambiguously enables Wolverine to build its proposed pipeline. Moreover, this section imposes no local consent requirement or condition on that project.

This Court repeatedly has recognized, "[w]hen a legislature has unambiguously conveyed its intent in a statute, the statute speaks for itself and there is no need for judicial construction; the proper role of a court is simply to apply the terms of the statute to the circumstances in a particular case." *In re Certified Question*, ___ Mich ___; 659 NW2d 597, 600 (2003). S*ee also State Farm Fire and Casualty, Co*, 466 Mich 142, 147; 644 NW2d 715 (2002) ("[i]t is not the role of the judiciary to second-guess the wisdom of a legislative policy choice; [its] constitutional obligation is to interpret—not to rewrite—the law"); *Byker v Mannes*, 465 Mich 636, 646; 641 NW2d 210 (2002) ("[i]t is a well-established rule of statutory construction that this Court will not read words into a statute"). As conveyed by the plain language of MCl 247.183(2), the Legislature intended to authorize a utility as defined under federal regulations to install facilities longitudinally in limited access highway rights-of-way without requiring consent for the project from numerous local governments.

C. The Court Of Appeals Misread MCL 247.183(1).

Subsection (2) unambiguously and independently enables a "utility" under 23 CFR 645.105(m) to install facilities longitudinally in limited access highways without local consent. The only local consent requirement in MCL 247.183 is found in subsection (1) of MCL 247.183. Subsection (1) authorizes certain entities to install facilities on public roads, including highway rights-of-way, subject to local consent. However, there is an explicit exception to the subsection

(1) requirements for entities falling within the federal "utility" definition who desire to construct infrastructure longitudinally within limited access highway rights-of-way.

The Court of Appeals decision focused on the definition of the word "including" in finding that subsection (1) bootstraps subsection (2) federally-defined utilities into its requirements. The Court overlooked, however, the importance of the words "subject to subsection (2)" immediately following the word "including." The word "subject" means to be "under the domination, control, or influence of something (often fol. by *to*)" or "being under the domination, rule, or authority of" another. *Random House Webster's College Dictionary* (2001)[4]. The local consent requirement contained in the last sentence of subsection (1) does not apply to entities fitting the subsection (2) definition of "utility" because such entities and projects are under the control of the requirements and conditions in subsection (2). The Court of Appeals interpretation of MCL 247.183(1) reads the words "subject to subsection (2)" out of the statute contrary to the well-established principle that every statutory word should be given meaning and courts should avoid any construction that would render any part of the statute surplussage or nugatory.

If the Legislature intended subsection (1) to impose both the local consent requirement in subsection (1) and the requirements of subsection (2) on the same utility project, it could have easily left out the words "subject to subsection (2)" and drafted subsection (2) to state that "a utility installing facilities longitudinally in limited access highway rights of way also shall . . . ." It, however, did not. Instead, it used the words "subject to subsection (2)", to demonstrate its

[4] Unless defined in a statute, every word or phrase will be ascribed its plain and ordinary meaning. *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 748 (citing MCL 8.3a; *Western Mich Univ Bd of Control* v *Michigan*, 455 Mich 531, 539; 565 NW2d 828 (1997). "As might be expected, in undertaking to give meaning to words this Court has often consulted dictionaries." *Chandler* v *County of Muskegon*, 467 Mich 315, 320; 652 NW2d 224 (2002).

intent that federally-defined utilities engaging in longitudinal construction in limited access highways must only comply with subsection (2)'s requirements.

Basic rules of statutory construction support this interpretation. Statutes that share a common purpose are *in pari materia* and must be read together as one law. *State Treasurer v Schuster*, 456 Mich 408, 417; 572 NW2d 628 (1998). When two statutes or provisions conflict, and one is specific to the subject matter while the other is only generally applicable, the specific statute prevails. *Id.* A subsequently enacted specific statute is regarded as an exception to a prior general one, especially if they are *in pari materia*. *Husted v Auto-Owners Ins Co*, 459 Mich 500, 516; 591 NW2d 642 (1999). These rules are particularly persuasive when one statute is both more specific and more recent. *Id.* The *in pari materia* rule is used to effect the Legislature's purpose as found in harmonious statutes regarding a subject. *Jennings v Southwood*, 446 Mich 125, 136-37; 521 NW2d 230 (1994).

Not only is subsection (2) more recent than subsection (1), having been created by the 1989 amendment, but it also is more specific. Subsection (1) deals with the construction of any type of structure, in any fashion, "upon, over, across, or under any public road, bridge, street, or public place . . . ." MCL 247.183(1) [emphasis added]. Subsection (2), in contrast, is far more specific – its deals only with longitudinal construction and only within limited-access highway rights-of-way. Subsection (2) also makes clear that a company that is a utility as defined in 23 CFR 645.105(m) may conduct such work so long as it acts "in accordance with standards approved by the state transportation commission that conform to governing federal laws and regulations." MCL 247.183(2).

Accordingly, subsection (2) governs where Wolverine seeks to install facilities "longitudinally within limited access highway rights-of-way . . . ." Subsection (2) controls the

specific type of project contemplated here (longitudinal construction within a limited-access highway rights-of-way) by the specific kind of entity at issue here (a utility as defined in 23 CFR 645.105 (m)), and is more recent than subsection (1). Thus, the *in pari materia* rule requires that subsection (2) rather than subsection (1) govern in this instance.

Rather than understanding that MCL 247.183(2) stands on its own to establish the requirements applicable to longitudinal utility use of limited access highways, the Court of Appeals misunderstood it to be a mere extension of, or addition to, MCL 247.183(1). The manner in which the lower Court reconciled subsections (1) and (2) together, however, was based on a erroneous understanding of those provisions.

Specifically, the Court of Appeals stated that subsection (1) defines the locations in which a project may occur (*e.g.*, longitudinally within limited access highway rights-of-way) while subsection (2) merely defines the type of facilities that may be built in those locations. (App, p 45a). While the definition of "utility" in 23 CFR 645.105 speaks largely in terms of facilities, it also states that "the term utility shall also mean the utility company . . . ." 23 CFR 645.105. This subsection relates to its own category of utility companies rather than merely to certain facilities. The manner in which the Court of Appeals reconciled subsections (1) and (2) together, therefore, is misguided.

The symmetrical structure of subsections (1) and (2) also demonstrates that subsection (2) is not merely an extension or component of subsection (1). Subsection (1) states, for example, that a "public utility company" may "enter upon, construct, and maintain" facilities in certain locations in accordance with certain specific conditions. Subsection (2) states that a federally-defined "utility" may "enter upon, construct and maintain" facilities in certain locations in accordance with certain conditions. Each subsection, on its own, enables a certain entity to

engage in certain projects under certain conditions. Rather than merely adding to subsection (1), therefore, subsection (2) stands on its own to define the requirements for federally-defined utilities engaging in longitudinal construction in limited access highway rights-of-way. It imposes, no local consent requirement on subsection (2) utilities.

This point is buttressed by the fact that not all entities defined as a "utility" under 23 CFR 645.105 (m) could be a "public utility company" under MCL 247.183(1). Under subsection (2), for example, a "utility" under 23 CFR 645.105(m) includes "a fire or police signal system" or a "street lighting system." 23 CFR 645.105. Such systems do not fit within the meaning of a "telephone" or "power" or similar traditional "public utility company" referenced under subsection (1). The Legislature did not intend subsection (2) merely as an add on to the requirements set forth in subsection (1).

Finally, the Court of Appeals found that not applying the local consent requirement in the second sentence of subsection (1) to Wolverine would render the first sentence of subsections (1) and (2) redundant. (App, p 46a). As it noted, "it is important to ensure that words in a statute note be ignored, treated as surplussage, or rendered nugatory." *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 748; 641 NW2d 567 (2002). The Court of Appeals' conclusion has the exact effect the Court tried to avoid, *i.e.* that conclusion makes the first sentence in subsection (1) and the first sentence in subsection (2) redundant.

Again, subsection (1) provides in pertinent part that:

> [t]elegraph, telephone, power, and other public utility companies . . . ***may enter upon, construct, and maintain*** [facilities in certain locations], including, subject to subsection (2), longitudinally within limited access highway rights-of-way . . . .

MCL 247.183(1) [emphasis added]. Subsection (2) states that:

> A utility as defined in 23 CFR 645.105(m) ***may enter upon, construct, and maintain*** utility lines and structures longitudinally

> within limited access highway rights-of-way in accordance with standards approved by the state transportation commission that conform to governing federal laws and regulations.

MCL 247.183(2) [emphasis added]. The Legislature chose to define the class of entities to which subsection (2) relates differently than those to which subsection (1) relates. At the same time, it began each subsection with basically the same enabling language, *i.e.* "may enter upon, construct and maintain . . . ." To avoid rendering that language in each subsection redundant, this Court must conclude that subsection (2) is more than a mere extension of subsection (1). Instead, it was enacted by the Legislature separately from subsection (1) to set forth the requirements applicable to longitudinal construction in limited access highway rights-of-way. Those conditions contain no local consent requirement.

For the reasons discuss above, the plain language and structure of MCL 247.183(2) enables Wolverine to install its pipeline in the I-96 rights-of-way without obtaining consent from the City and other localities through which the pipeline would run.

II. THE LEGISLATIVE HISTORY OF MCL 247.183 FURTHER DEMONSTRATES THAT WOLVERINE NEED NOT OBTAIN LOCAL CONSENT TO CONSTRUCT ITS PIPELINE IN STATE HIGHWAY RIGHTS-OF-WAY.

To the extent MCL 247.183 does not plainly allow Wolverine to construct its pipeline in the I-96 rights-of-way without local consent, the statute is ambiguous. "Where the language of a statute is obscure or of doubtful meaning," this Court may "recur to the history of when it was passed and of the act itself in order to ascertain the reason as well as the meaning of its provisions . . . ." *People v Hall*, 381 Mich 175, 191; 215 NW2d 166 (1974). Moreover, this Court "may also consider all conditions and circumstances surrounding its enactment in the light of the general policy of previous legislation on the same subject." *Id.* "When determining legislative intent, statutory language should be given a reasonable construction considering its purpose and the object sought to be accomplished." *Lorencz v Ford Motor Co*, 439 Mich 370, 377; 483 NW2d 844 (1992).

The development of federal regulations regarding longitudinal utility construction in interstate highway rights-of-way and the related legislative history of MCL 247.183 further shows that the Legislature intended to enable federally-defined "utilities" such as Wolverine to longitudinally use interstate highways such as I-96 with permission from the state in accordance with federal regulations. The Legislature did not intend to force such utilities to obtain the consent of numerous local governments such as the City.

A. The Accommodation Of Public Utilities In Highways Under Title 23, Part 645 Of The Code Of Federal Regulations.

Under Title 23, Part 645 ("Part 645") of the Code of Federal Regulations, the Federal Highway Administration ("FHWA") regulates the use of rights-of-ways by utilities in Federal-

aid highways, such as interstate highways like I-96.[5] The definition of "utility" in 23 CFR 645.105 is contained in those provisions.

Until 1988, the longitudinal use of interstate highway rights-of-way were allowed only by permit of the FHWA when such use was "clearly justified due to special and unique circumstances." *Accommodation of Utilities; Longitudinal Use of Freeway Right-of-Way*, 51 Fed Reg 45479 (1986). (App, p 56a-69a). By the mid-1980s, however, there was "considerable interest" by telecommunications companies to install underground fiber optics cable systems under the Interstate highway system. Additionally, state governments were interested in leasing such rights-of-way to companies to raise additional revenue. *Accommodation of Utilities; Longitudinal Use of Freeway Right-of-Way*, 51 Fed Reg 45479 (1986) (to be codified at 23 CFR Part 645). (*Id.*)

In light of this, on February 2, 1988, Part 645 was amended to allow longitudinal utility use of interstate highway rights-of-way if that construction was permitted by the state in which it occurred and in accordance with standards approved by the FHWA. *Accommodation of Utilities; Longitudinal Utility Use of Freeway Right-of-Way*, 53 Fed Reg 2829-01 (1988). (App, pp 70a-84a). The utility accommodation plan submitted by the Michigan Department of Transportation was approved by the FHWA on December 16, 1985 and a subsequent amendment was approved in 1995.[6]

[5] "Federal-aid highway projects" is defined by Part 645 as "those active or completed highway projects administered by or through a State transportation department which involve or have involved the use of Federal-aid highway funds for the development, acquisition of right-of-way, construction or improvement of the highway or related facilities . . . ." 23 CFR 645.209.

[6] Wolverine has obtained a permit from the Michigan Department of Transportation to construct its pipeline in the I-96 right-of-way.

B. The Accommodation Of Utilities In Highways Under Section 13 Of Michigan Public Act 368 Of 1925, As Amended.

As originally enacted in 1925, 1925 PA 368 (the forerunner of MCL 247.183) stated:

> Telegraph, telephone, power and other public utility companies and municipalities are authorized to enter upon, construct, and maintain telegraph, telephone or power lines, construct and maintain telegraph, telephone or power lines, pipe lines . . . and like structures upon, over, across, or under any public road . . . *Provided,* That every such . . . public utility company and municipality, before any of the work of such construction and erection shall be commenced, shall first obtain the consent of the duly constituted authorities of the city, village, or township through or along which said lines and poles are to be constructed and erected.

1925 PA 368, § 13 [emphasis added] (Eff Aug 27, 1925). (App, p 88a). Thus, MCL 247.183 originally was enacted in substantially the same form as current MCL 247.183(1). It did not, however, explicitly address longitudinal construction in limited access highway rights-of-way. *See* 1925 PA 368 (Eff Aug 27, 1925). (*Id.*)

In 1972, the statute was amended to add cable television companies to the category of "public utility companies" addressed by 1925 PA 368. Otherwise, the statute remained unchanged for 64 years between its enactment and 1989. 1972 PA 268 (Eff Oct 11, 1972). (App, pp 91a-93a).

In 1989, after the federal government devolved authority over longitudinal utility use of interstate highways to the states as discussed above, the Michigan Legislature amended MCL 247.183. That amendment specifically addressed utilities' longitudinal use of limited access highway rights-of-way.

At that time, the Legislature inserted the phrase "except longitudinally within limited access highway rights of way" into MCL 247.183 and added subsection (2). After the 1989 amendment, the statute stated (with added or altered language in bold print):

> (1) Telegraph, telephone, power, and other public utility companies, and cable television companies and municipalities are authorized to enter upon, construct, and maintain telegraph, telephone, or power lines, pipe lines, wires, cables, poles, conduits, sewers or similar structures upon, over, across, or under any public road, bridge, street, or public place, **except longitudinally within limited access highway rights of way**, and across or under any waters in this stated. A telegraph, telephone, power, and other public utility company, cable television company, and municipality, before any of this work is commenced, shall first obtain the consent of the governing body of the city, village, or township through or along which these lines and poles are to be constructed and maintained.
>
> **(2) The state transportation department may permit a utility as defined in 23 CFR 645.105 to enter upon, construct, and maintain utility lines and structures, longitudinally within limited access highway rights-of-way in accordance with standards approved by the state transportation commission. The standards shall conform to governing federal laws and regulations and may provide for the imposition of a reasonable charge for longitudinal use of limited access highway rights of way . . . .**

(App, pp 94a-95a).

In 1994, the Legislature amended MCL 247.183(2) to define what was a reasonable amount the state transportation department could charge utilities for longitudinal use of limited access highway rights-of-way. It inserted into subsection (2) language stating that a reasonable charge under standards for longitudinal use of limited access highway rights-of-way "shall not exceed $1,000 per mile of longitudinal use with a minimum fee of $5,000 per permit . . . ." *Id.* In subsection (1), the Legislature also changed the word "except" in the phrase "except longitudinally in limited access highway rights-of-way" to "including, subject to subsection (2)." It also changed the words "authorized to" to "may." 1994 PA 306 (Eff July 14, 1994). After the 1994 amendment, the statute read (with added or altered language in bold):

> (1) Telegraph, telephone, power, and other public utility companies, cable television companies, and municipalities **may** enter upon, construct, and maintain telegraph, telephone, or power

> lines, pipe lines, wires, cables, poles, conduits, sewers or similar structures upon, over, across, or under any public road, bridge, street, or public place, **including, subject to subsection (2),** longitudinally within limited access highway rights-of-way, and across or under any of the waters in this state, with all necessary erections and fixtures for that purpose. A telegraph, telephone, power, and other public utility company, cable television company, and municipality, before any of this work is commenced, shall first obtain the consent of the governing body of the city, village, or township through or along which these lines and poles are to be constructed and maintained.
>
> (2) A utility as defined in 23 CFR 645.105 may enter upon, construct and maintain utility lines and structures longitudinally within limited access highway rights-of-way in accordance with standards approved by the state transportation commission **that conform to governing federal laws and regulations . . . . The standards may provide for the imposition of a reasonable charge for longitudinal use of limited access highway rights-of-way . . . . The charge shall be calculated to reflect a 1-time installation permit fee that shall not exceed $1,000.00 per mile or longitudinal use of limited access highway rights-of-way with a minimum fee of $5,000 per permit.**

MCL 247.183 (1)-(2).[7] (App, pp 96-a-97a).

C. The Legislative History Of MCL 247.183 Shows That The Legislature Intended To Set Forth Requirements For Longitudinal Use Of Limited Access Highway Rights-Of-Way In Subsection (2) And Not Subsection (1).

In 1989, the Legislature added subsection (2) to MCL 247.183 to accommodate the devolution of authority over utility use of limited access highways from the federal government. In doing so, it enabled a utility – as that term is defined under Part 645 – to use limited access highways upon permission from the state in conformance with federal regulations. The Legislature did not intend to inject any local consent requirements into that scheme.

[7] In 2002, the Legislature again amended MCL 247.183 by adding subsection (3), which allows "a person engaged in the collection of traffic data or the provision of travel-related information" to install "electronic devices" on "limited access and other highway rights-of-way in accordance with standards approved by the state transportation commission that conform to governing federal laws and regulations." 2002 PA 151 (Eff Apr 8, 2002).

Had the Legislature intended to use subsection (2) merely to add conditions to longitudinal use of limited access highways on top of conditions already set forth in subsection (1), it could have begun subsection (2) to state that:

> any public utility company installing facilities in limited access highway rights-of-way under subsection (1) shall . . . .

It also could have started subsection (2) to state:

> after receiving the prior local consent set forth in subsection (1), a utility as defined in 23 CFR 645.105 may enter upon, construct, and maintain utility lines and structures longitudinally within limited access highway rights-of-way in accordance with standards approved by the state transportation commission . . . .

The Legislature, however, did not do that and instead intended subsection (2) to set forth the requirements for longitudinal construction in limited access highways – not as an add-on to subsection (1) requirements. *See e.g. People v Ramsdell*, 230 Mich App 386; 585 NW2d 1 (1998) (legislature is presumed to be aware of the consequences of the use, or omission, or language when it enacts laws).

Since 1925, the language now contained in MCL 247.183(1) governed the use of all public roads in this state by the state's "public utility companies" and contained a local consent requirement. As evidenced by the circumstances under which it was enacted and the words used by the Legislature, MCL 247.183(2) was in contrast enacted to accommodate the federal government's delegation of authority to the state over the use of federally-regulated highways by federally-defined utilities.

As it originally was introduced in the Legislature, MCL 247.183 (2) would have allowed "any person" to install facilities in limited access highway rights-of-way. *See* HB 4767, introduced May 3, 1989. (App, pp 98a-99a). As it was enacted, it specifically was tailored to accommodate "utilities" under Title 23, Part 645 of the Code of Federal Regulations.

Additionally, subsection (2) was enacted to allow "for the imposition of a reasonable charge" for longitudinal use of limited access highways. *Id.* This language was consistent with the desire of states to lease interstate highway rights-of-way to utilities, which in part led to the federal government's devolution of authority over longitudinal utility use of such rights-of-way. *Accommodation of Utilities; Longitudinal Use of Freeway Right-of-Way*, 51 Fed Reg 45479 (1986). (App, pp 56a-69a).

Finally, unlike subsection (1), subsection (2) was enacted with language requiring that construction contemplated by that subsection "conform to governing federal laws and regulations . . . ." 1989 PA 215 (Eff Nov 15, 1989). Clearly, subsection (2) was intended to govern longitudinal utility use of limited access highways by entities meeting the "utility" definition under Title 23, Part 645 of the Code of Federal Regulations, which formerly was governed by the FHWA. It was not intended merely to add new requirements for construction also governed by subsection (1). t was intended to eliminate local control. *See* Senate Fiscal Agency Legislative Analysis of HB 4767 (October 11, 1989) (**"The bill would amend Public Act 365 of 1925 which regulates the use of highways by utility companies to authorize the Department of Transportation, rather than local governing bodies, to permit the longitudinal construction of utility lines and structures within limited access highway rights-of-ways. . . .The bill would create an exception to this provision for longitudinal construction within limited access highway rights-of-way."**) (Emphasis added); (App, p 100a).

In 1994, the Legislature revised MCL 247.183 (2) to define the amount that the state transportation department could charge to lease limited access highway rights-of-way to utilities. Specifically, it added language stating that a "reasonable charge" for such access could:

> not exceed $1,000.00 per mile of longitudinal use of limited access highway rights-of-way with a minimum fee of $5,000.00 per permit.

MCL 284.183(2). That amendment also changed the word "except" to "including, subject to subsection (2)" in MCL 247.183 (1). (App, p 96a-97a).

The Court of Appeals below erroneously found that the change in 1994 from "except" to "including, subject to subsection (2)" caused subsection (2) utilities to be subject to the local consent requirement in subsection (1). That change, however, clarified that longitudinal use of limited access highway rights-of-way is permitted but is "subject to subsection (2)" – it did not make such construction projects subject to the second sentence of subsection (1).

Arguably the words "except longitudinally in limited access highway rights-of-way," inserted into MCL 247.183 (1) in 1989, were confusing or conflicting for a utility that fit both the definition of "public utility company" under MCL 247.183(1) and "utility" under MCL 247.183(2). Because of the word "except," one could argue that MCL 247.183(1) did not allow the utility to use those highways although subsection (2) allowed such use.[8] In 1994, accordingly, the Legislature clarified that all longitudinal construction was permitted but that it was governed by – or "subject to" – subsection (2).

The sole substantive aim of the 1994 amendment appears to have been promoting economic development by limiting the lease fees the statute could charge utilities seeking to deploy facilities longitudinally in limited access highway rights-of-way. As summarized in legislative analysis regarding the 1994 amendment:

[8] Such confusion should have been unnecessary because, as discussed at length above, the plain language of MCL 247.183 (2) on its own allows a utility as defined in 23 CFR 645.105 to install facilities longitudinally in limited access highway rights-of-way. Avoiding a dispute over a conflict between subsections (1) and (2), such as the dispute raised in this case, may have led the Legislature to attempt to clarify MCL 247.183(1).

> In recent years, the Federal government has granted states the authority to lease rights-of-way on limited access highways for purposes of utility line construction and maintenance. The Michigan Transportation Commission's policy for leasing these rights-of-way sets an annual lease fee for $1,600 per mile in rural areas and $3,200 per mile in urban areas; no leases for rights-of-way on limited access highways currently are in place . . . . Although limited access highways often would provide the most efficient route for a utility line, the cost of leasing that land under the Commission's current policy may be prohibitive.

Senate Fiscal Agency Analysis of SB 1008 (August 3, 1994). (App, pp 101a-102a). As enacted, the 1994 amendment limited the lease rates the state could charge. It would make little sense to conclude that while the Legislature limited lease fees to promote access to limited access highways, at the same time it hindered such access by subjecting it to the veto of every local community through which a project along a highway might pass.

Moreover, although Michigan legislative analyses typically are a "feeble" indicator of legislative intent,[9] it nevertheless is the case that no such "history" on the 1994 amendment makes any mention of the change in terminology in subsection (1) (from "except longitudinally within limited access highway rights-of-way" (1989-94) to "including, subject to subsection (2), longitudinally within limited access highway rights-of-way...." (1994-present)). The absence of any discussion, if it were intended to be a significant change, supports the conclusion that the change was technical and intended merely to clarify the statute, and did not substantively impose local consent requirements on longitudinal construction in limited access highway rights-of-way. Presumably, had the Legislature in enacting the 1994 amendment intended such a significant increase in municipal powers, there would be *some* reference in the legislative history to that effect. There is none.

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[9] *Frank W Lynch & Co v Flex Technologies, Inc*, 463 Mich 578, 587-88 & n 7; 624 NW2d 180 (2001).

The legislative history of MCL 247.183, accordingly, supports the conclusion that only subsection (2) sets forth the requirements applicable to longitudinal construction in a limited access highway by a utility such as Wolverine. Those requirements do not include obtaining consent from the City of Lansing.[10]

III. THE STATE'S JURISDICTION OVER AN INTERSTATE HIGHWAY IN REGARD TO AN ISSUE BROADER THAN A MERE LOCAL INTEREST IS PARAMOUNT IN THIS CASE.

This Court has long recognized that the state's authority is "paramount" over issues related to state highways that are broader than mere issues of "local concern." In *Allen v Ziegler*, 338 Mich 407, 416; 61 NW2d 625 (1953), the state transportation commissioner prohibited parking along a state trunkline highway. In rejecting an attempt by a city to enjoin that traffic order within its city limits, this Court stated:

> The State by the establishment of a trunk line highway which includes the street in question in [the city] thereby assumed *an obligation to the people of the state in general* to see to it that the street in question, together with the trunk line in general, is so maintained and controlled as to be reasonably available for the flow of traffic.

Id. at 416 [emphasis added]. This Court thus recognized that the state's authority over a state highway (in furtherance of statewide interests) will override a city's mere local concern.

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[10] It should also be noted that in 1929, the Legislature provided petroleum pipeline companies condemnation authority to facilitate pipeline construction. Section 2 of 1929 PA 16 states in pertinent part:

> Sec. 2. For the purpose of acquiring necessary right-of-ways, every such corporation, association or person is hereby granted the right of condemnation by eminent domain, and the use of the highways in this state, for the purpose of transporting petroleum by pipe lines, and the location, laying, constructing, maintaining and operations thereof; and such condemnation proceedings shall be conducted in accordance with the same procedure and in the same manner as is provided by the laws of this state for the condemnation of right-of-ways by railroad companies.
>
> MCL 483.2

This Court also recognized the need to promote state interests in *Case v City of Saginaw*, 291 Mich 130; 288 NW 357 (1939). In *Case*, private property owners attempted to prevent the construction of a bridge within Saginaw city limits along a state trunk line highway. In concluding that the bridge could be constructed, this Court stated:

> This expenditure by the state is on the theory that a state trunk line road running through a city is not a matter of purely local concern, but is for the benefit of the people of the entire state . . . . [T]he municipality retains reasonable control of its highways, which is such control as cannot be said to be unreasonable and inconsistent with regulations which have been established, or may be established, by the state itself with reference thereto.

291 Mich at 149. *See also Jones v City of Ypsilanti*, 26 Mich App 574, 580 (1971)(Court of Appeals stating that "Municipalities were meant to retain reasonable control over state trunkline highways located within their boundaries so long as that control pertains to local concerns and does not conflict with the paramount jurisdiction of the state highway commission.")

The distinction between the requirements of subsection (1) and subsection (2) of MCL 247.183 is substantively based on important policy considerations. MCL 247.183(1) relates to "public utility companies" and municipalities building structures on or under all public roads, bridges, public places and waters in this state. MCL 247.183(1). Subsection (1), by way of example, would require a local telephone company or cable television company to obtain the City's consent to install cables among its city streets.

In contrast, MCL 247.183 (2) relates specifically to an area of broader concern, *i.e.*, allowing federally-defined "utilities" to install facilities along limited access highways. In this case, Wolverine seeks to construct its proposed pipeline along an interstate highway. Rather than requiring *local consent* for a project that runs longitudinally through many local communities along an interstate highway, subsection (2) merely requires that the construction comply with *state* standards that conform to *federal* requirements. In contrast to a public utility

company or a municipality installing facilities in one or two locations or among the streets of a single city, longitudinal construction in a limited access highway implicates broader statewide concerns and, accordingly, is subject only to the paramount jurisdiction of the state.

Here, Wolverine's proposed pipeline will run for twenty-six miles (mostly along I-96), pass through multiple local communities, and will help deliver gas supply to all of mid-Michigan. While a municipality has a legitimate interest to control the construction of utility facilities that primarily affect it and are of a particularly local concern, the policy considerations change considerably when that single municipality merely abuts an interstate highway along which a facility will be built that will affect much of the entire state. The State of Michigan's recognized need for this pipeline is "paramount" over issues related to mere issues of "local concern". Thus, the Court of Appeals decision must be reversed.

CONCLUSION

For all of the foregoing reasons, the Court of Appeals decision holding that MCL 247.183 requires Wolverine to obtain local consent prior to installing its proposed petroleum products pipeline within an interstate highway rights-of-way is erroneous and should be reversed.

Respectfully submitted,

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